

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**JUDY CHOU CHIUNG-YU WANG**

**Plaintiff,**

**v.**

**THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA, et al.**

**Defendants.**

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**CIVIL ACTION NO. 3:09-CV-1309-O (BF)**

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

After reviewing all relevant matters of record in this case, including the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, Doc. # 46 (“MJ-FCR”), and any objections thereto, in accordance with 28 U.S.C. § 636(b)(1), the undersigned District Judge is of the opinion that the Findings and Conclusions of the Magistrate Judge are correct and they are accepted as the Findings and Conclusions of the Court.

It is apparent from all relevant matters of record that the Plaintiff’s purpose in attempting to bring Milkie Ferguson Investments, Inc., (“Milkie”) into this action as a party is to minimize costs of discovery from a witness – namely, Milkie. *See e.g.* Doc. # 20 (“Plaintiff’s Response”) at 5. The Court notes in particular and agrees with the conclusion of the Magistrate Judge that:

Although a court should rarely dismiss a claim which fails to meet the pleading requirements without granting leave to amend, this is a case where the defect is simply incurable. Plaintiff’s own admissions show that, at most, Milkie is a fact witness from whom Plaintiff may seek discovery and not a party whose joinder is required.

MJ-FCR at 6-7.

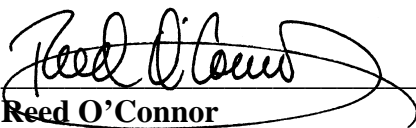
Under the best construction, Plaintiff's Objections do nothing more than confirm the basis for that conclusion. *See* Doc.. # 49 ("Plaintiff's Objections") at 9-10. Plaintiff contends that:

Milkie itself suffered economic loss after hiring, investing and training in Wang and further had to amend to false amended U4 which was generated from the Prudential's false amended U5. In this capacity, Milkie is not a Defendant, but as a co-Plaintiff in this case .... [I]t is premature to dismiss Milkie prior to full Discovery [sic.]. Wang will amend to drop Milkie as a required party and add Milkie as a party of Defendant.

*Id.* at 10. It is apparent, upon review of the totality of Plaintiff's Objections, that the Magistrate Judge was correct in concluding that "Plaintiff fails to state a claim upon which relief may be granted against Milkie. From Plaintiff's admission in her response, the Court finds that Plaintiff has stated her best case against Milkie in her 55-page Amended Complaint and that the opportunity for Plaintiff to further amend her Complaint would be futile." MJ-FCR at 6.

Accordingly, Plaintiff's complaint against Milkie Ferguson Investments, Inc., will be dismissed pursuant to Rule 12(b)(6).

**SIGNED** this 25th day of February, 2010.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE